



U.S. Citizenship
and Immigration
Services

FILE:

Office: VERMONT SERVICE CENTER

Date:

OCT 26 2004

IN RE:

Applicant:

APPLICATION:

Application for Temporary Protected Status under Section 244 of the Immigration and Nationality Act, 8 U.S.C. § 1254

ON BEHALF OF APPLICANT:

SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Director
Administrative Appeals Office

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

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DISCUSSION: The application was denied by the Director, Vermont Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Honduras who is seeking Temporary Protected Status (TPS) under section 244 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1254.

The director denied the application because the applicant failed to establish she was eligible for late registration. The director also found that the applicant had failed to establish her continuous residence in the United States since December 30, 1998, and continuous physical presence since January 5, 1999.

On appeal, the applicant submits additional documentation.

Section 244(c) of the Act, and the related regulations in 8 C.F.R. § 244.2, provide that an applicant is eligible for TPS only if such alien establishes that he or she:

- (a) Is a national, as defined in section 101(a)(21) of the Act, of a foreign state designated under section 244(b) of the Act;
- (b) Has been continuously physically present in the United States since the effective date of the most recent designation of that foreign state;
- (c) Has continuously resided in the United States since such date as the Attorney General may designate;
- (d) Is admissible as an immigrant except as provided under § 244.3;
- (e) Is not ineligible under § 244.4; and
- (f)
 - (1) Registers for Temporary Protected Status during the initial registration period announced by public notice in the FEDERAL REGISTER, or
 - (2) During any subsequent extension of such designation if at the time of the initial registration period:
 - (i) The applicant is a nonimmigrant or has been granted voluntary departure status or any relief from removal;
 - (ii) The applicant has an application for change of status, adjustment of status, asylum, voluntary departure, or any relief from removal which is pending or subject to further review or appeal;

(iii) The applicant is a parolee or has a pending request for reparole; or

(iv) The applicant is a spouse or child of an alien currently eligible to be a TPS registrant.

- (g) Has filed an application for late registration with the appropriate Service director, within a 60-day period immediately following the expiration or termination of conditions described in paragraph (f)(2) of this section.

The phrase continuously physically present, as defined in 8 C.F.R. § 244.1, means actual physical presence in the United States for the entire period specified in the regulations. An alien shall not be considered to have failed to maintain continuous physical presence in the United States by virtue of brief, casual, and innocent absences as defined within this section.

The phrase continuously resided, as defined in 8 C.F.R. § 244.1, means residing in the United States for the entire period specified in the regulations. An alien shall not be considered to have failed to maintain continuous residence in the United States by reason of a brief, casual and innocent absence as defined within this section or due merely to a brief temporary trip abroad required by emergency or extenuating circumstances outside the control of the alien.

The phrase brief, casual, and innocent absence, as defined in 8 C.F.R. § 244.1, means a departure from the United States that satisfies the following criteria:

- (1) Each such absence was of short duration and reasonably calculated to accomplish the purpose(s) for the absence;
- (2) The absence was not the result of an order of deportation, an order of voluntary departure, or an administrative grant of voluntary departure without the institution of deportation proceedings; and
- (3) The purposes for the absence from the United States or actions while outside of the United States were not contrary to law.

Persons applying for TPS offered to Hondurans must demonstrate that they have continuously resided in the United States since December 30, 1998, and that they have been continuously physically present since January 5, 1999. The initial registration period for Hondurans was from January 5, 1999, through August 20, 1999. The applicant filed her initial TPS application with Citizenship and Immigration Services (CIS) on June 18, 2003.¹

¹ It appears that the applicant had previously attempted to file for TPS; however, her paperwork was rejected on June 10, 2003, and she was advised of the correct procedures for filing. The instant Form I-821 was accepted for processing on June 18, 2003.

To qualify for late registration, the applicant must provide evidence that during the initial registration period, he or she was either in a valid immigration status, had an application pending for relief from removal, was a parolee, or was the spouse or child of an alien currently eligible to be a TPS registrant, and had filed an application for late registration within 60 days of the expiration or termination of the conditions described in 8 C.F.R. § 244.2(f)(2).

The burden of proof is upon the applicant to establish that he or she meets the above requirements. Applicants shall submit all documentation as required in the instructions or requested by CIS. 8 C.F.R. § 244.9(a). The sufficiency of all evidence will be judged according to its relevancy, consistency, credibility, and probative value. To meet his or her burden of proof the applicant must provide supporting documentary evidence of eligibility apart from his or her own statements. 8 C.F.R. § 244.9(b).

In support of her application, the applicant submitted photocopies of the following documents:

1. The identification page from her Honduran passport, showing that the passport was issued in New York on April 30, 2003;
2. A birth certificate for her son [REDACTED] born on September 27, 1999 in New York, New York;
3. A birth certificate for her son, [REDACTED] born on August 1, 2002 in New York, New York; and,
4. Page 2 of an invoice from MetTel, New York, New York, dated May 1, 1999.

On August 14, 2003, the applicant was requested to submit additional evidence to establish her continuous residence and continuous physical presence in the United States during the requisite time periods. The applicant was also requested to submit evidence to establish her eligibility for late registration as set forth in 8 C.F.R. § 244.2(f)(2). The applicant failed to respond to this request.

The director determined that the evidence submitted was insufficient to establish that the applicant: 1) had continuously resided in the United States since December 30, 1998; 2) had been continuously physically present in the United States since January 5, 1999; and, 3) was eligible for late registration. The director denied the application on October 15, 2003.

On appeal, the applicant provides photocopies of the following additional documentation:

5. Two New York State Department of Health, WIC Program checks issued to the applicant. One of the checks shows a validity date from September 27, 2002 to October 26, 2002; the other from January 27, 2003 to February 25, 2003;
6. An illegible receipt from Soundbuys, Bronx, New York;
7. A receipt from Brother Famous, Bronx, New York, with a hand-written date of June 6, 2001. It is noted that the receipt includes a preprinted date of "2000;"
8. Three "Reports of Support Collected" issued to the applicant by the New York State Department of Social Services, dated November 2000, January 2001, and March 2001;
9. A medical report indicating that the applicant had an ultrasound on May 5, 1999;
10. A New York State Department of Health, Division of Nutrition, WIC Medical Referral Form for [REDACTED] [REDACTED] dated April 5, 2001;

11. A New York State Department of Health, Division of Nutrition, WIC Medical Referral Form for the applicant, dated June 11, 2002;
12. Two Western Union customer receipts dated December 4, 2002 and December 16, 2002; and,
13. A "Lifetime Immunizations Dates and Signature" record for [REDACTED] born on September 27, 1999, showing various immunizations given on November 30, 1999; February 1, 2000; May 10, 2000; June 19, 2000; June 21, 2000; October 12, 2000; April 4, 2001; and, October 3, 2001.

The first issue to be addressed in this proceeding is whether the applicant is eligible for late registration.

The record of proceeding confirms that the applicant filed her initial TPS application on June 18, 2003, after the initial registration period had closed. A review of the record reveals that the applicant has not submitted any evidence to establish that she has met any of the criteria for late registration described in 8 C.F.R. § 244.2(f)(2). Consequently, the director's conclusion that the applicant failed to establish her eligibility for late registration will be affirmed.

The second issue to be addressed in this proceeding is whether the applicant has established her continuous residence and continuous physical presence in the United States during the requisite time periods.

The applicant claims to have lived in the United States since September 15, 1995. It is reasonable to expect that she would have a variety of contemporaneous evidence to support this claim. However, all of the documentation submitted by the applicant is dated on or after May 1, 1999.

It must be concluded that the applicant has failed to overcome the director's additional grounds for denial of the application. The applicant has not submitted sufficient credible evidence to establish her continuous residence in the United States since December 30, 1998, or her continuous physical presence in the United States since January 5, 1999. Therefore, she has failed to establish that she has met the criteria described in 8 C.F.R. § 244.2(b) and (c). Consequently, the director's decision to deny the application for temporary protected status for these reasons, as well, will be affirmed.

An alien applying for temporary protected status has the burden of proving that he or she meets the requirements enumerated above and is otherwise eligible under the provisions of section 244 of the Act. The applicant has failed to meet this burden.

ORDER: The appeal is dismissed.